

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 LEHIGH COUNTY EMPLOYEES'
5 RETIREMENT SYSTEM, on behalf
6 of itself and all others
7 similarly situated,,
8
9

CIVIL ACTION NUMBER:
3:17-cv-00209-ZNQ-LHG

6 Plaintiffs,

FAIRNESS HEARING
VIA REMOTE ZOOM
VIDEOCONFERENCE

7 v.

8 NOVO NORDISK A/S, LARS
9 REBIEN SORENSEN, and JESPER
10 BRANDGAARD,

10 Defendants.

11 Clarkson S. Fisher Building & U.S. Courthouse
12 402 East State Street
13 Trenton, New Jersey 08608
14 July 13, 2022
15 Commencing at 11:00 a.m.

14 B E F O R E:

THE HONORABLE ZAHID N. QURAIISHI,
UNITED STATES DISTRICT JUDGE

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16 A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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4 Pro Se Objector

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ALSO PRESENT: Signe Konkell, client representative from Novo
7 Nordisk

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1 (PROCEEDINGS held via remote Zoom video conference before
2 The Honorable ZAHID N. QURASHI, United States District Judge,
3 on July 13, 2022, at 11:00 a.m.)

4 THE COURT: Good morning, everyone. We are on the
5 record in in re: Novo Nordisk Securities Litigation. The
6 docket number is 17-209 for a final approval of the proposed
7 settlement as well as request for attorneys' fees.

8 First, before I even take appearances, I want to put on
9 the record my apologies. This hearing was supposed to be
10 scheduled on two prior occasions. The Court had to move it
11 due to conflicts in scheduling, which is not something that I
12 take lightly. So I do want to just put on the record that I
13 appreciate the patience and understanding of the parties as
14 well as counsel in allowing the Court to move this today.
15 Although, we'll get through it, but I just want to make sure I
16 have it on the record.

17 Now that I've said that, and I thank you all for your
18 patience and your understanding, let me get appearances from
19 counsel.

20 MR. CECCHI: Good morning, Your Honor. James Cecchi,
21 Carella Byrne on behalf of the plaintiffs and the Class. With
22 me from my office today is Don Ecklund and Kevin Cooper. I'm
23 going to let my other esteemed colleagues introduce
24 themselves, starting with Mr. Hollander.

25 MR. HOLLANDER: Good morning, Your Honor. Adam

1 Hollander from Bernstein Litowitz Berger & Grossmann on behalf
2 of the lead plaintiffs and the Class. With me from my firm
3 today are my colleagues, Katherine Sinderson and David Duncan.

4 THE COURT: Good afternoon to all of you. Do I have
5 any other counsel on here from the defense?

6 MR. LLORENS: Also for the plaintiffs is Ryan
7 Llorens, Ellen Gusikoff, and Luke Brooks from Robbins Geller.
8 And we also have two summer associates in the conference room
9 with us, Jeremy Daniels and Servinos Kervosi.

10 THE COURT: Full team over there. Okay.

11 MS. GRANT: Good morning, Your Honor. We also have
12 Kyla Grant from Saxena White. The firm is an executive
13 committee member and counsel for co-lead plaintiff City of
14 Clearwater.

15 THE COURT: Good afternoon.

16 MS. SCULLION: One more, Your Honor. Good morning.
17 Jennifer Scullion from Seeger Weiss for the plaintiffs.

18 THE COURT: Good afternoon, Ms. Scullion.

19 Is that everybody?

20 MR. CECCHI: That's it, Judge.

21 MR. GRIFFINGER: Good morning, Your Honor. Michael
22 Griffinger from Gibbons for defendants.

23 MR. POTISCHMAN: Good afternoon, Your Honor. This is
24 Neal Potischman from Davis Polk on behalf of the defendants.
25 With me today is Patrick Blakemore from Davis Polk. And also

1 on the line is a client representative from Novo Nordisk,
2 Signe Konkell.

3 MR. HEDLEY: Good morning, Your Honor. Neville
4 Hedley from Hamilton Lincoln Law Institute, pro se objector.

5 THE COURT: Mr. Hedley, I just wanted to make sure
6 you were here, too. I'll put on the record, too, that I've
7 received all the written submissions from the parties. Let me
8 just make sure I at least put that on the record so you know
9 what the Court has reviewed for purposes of today. I've got
10 Lead Plaintiffs' Memorandum of Law in Support of a Motion for
11 Final Approval of Settlement and Approval of Plan of
12 Allocation. That was at docket number 350 on the public
13 docket.

14 I've got Lead Counsel's Memorandum of Law in Support of
15 Motion for Attorneys' Fees and Litigation Expenses, and Award
16 to Lead Plaintiffs, which is docket number 351.

17 Mr. Hedley, I've got your objection that was filed, I
18 believe, on docket number 354.

19 I've got Lead Plaintiff Reply Brief in Further Support
20 of their Motion for Final Approval of Settlement and Approval
21 of Plan of Allocation as well as the Motion for Attorneys'
22 Fees and Litigation Expenses, Awards to Lead Plaintiffs, which
23 I believe is at docket number 357.

24 Counsel, does that sound accurate on your end from
25 plaintiff and from defense?

1 MR. HOLLANDER: Yes, Your Honor.

2 THE COURT: Mr. Hedley, that accurately identifies
3 your written submission for your objections?

4 MR. HEDLEY: Yes, Your Honor.

5 THE COURT: All right. Let me do this. Let me just
6 briefly say what we're going to do today and how we'll
7 approach it and then we'll go from there. On March 8th of
8 this year the Court granted preliminary approval of the class
9 action settlement, which was at docket number 344. We're here
10 today for a final hearing on the fairness, reasonableness, and
11 adequacy of the settlement reached.

12 Two other items are pending before the Court. One is
13 plaintiffs' motion for attorneys' fees, expenses, and service
14 awards, and the Class Member's objection, Mr. Hedley's
15 objection to those fees. Even though the notice was required
16 from Class Members who intended to appear at today's hearing,
17 and the Court did not receive any notice of any intention to
18 appear, I'll allow any Class Members who are present to speak,
19 if they so choose.

20 First, I think I want to hear from Class counsel on the
21 Class certification under Rule 23, the fairness of the
22 settlement allowing you to place on the record the terms of
23 the settlement agreement, the notice that was sent to the
24 Class Members, the response provided by the Class Members, and
25 anything else you believe that I ought to know.

1 Second, I'll also hear from the Class Representative
2 and defense counsel as well as any objectors, in this case Mr.
3 Hedley.

4 Lastly, the Court will turn to Class counsel for their
5 motion for attorneys' fees and costs.

6 Any objection to kind of just running through that in
7 that manner from plaintiff?

8 MR. CECCHI: No, Your Honor.

9 MR. HOLLANDER: No, Your Honor.

10 THE COURT: All right. With respect to the
11 plaintiffs or Class counsel, who's speaking, or is it more
12 than one person?

13 MR. CECCHI: Judge, it will be more than one person.
14 Mr. Hollander will address some of the issues raised by Mr.
15 Hedley. I can briefly go through the 23(e)(2) and *Girsh*
16 factors, if Your Honor would like. Sort of an overview of the
17 settlement and why we think it's fair, reasonable, and
18 adequate, and should be approved.

19 THE COURT: Why don't we do that, Mr. Cecchi. Why
20 don't we put some of the basics of the terms of the settlement
21 and some of the other kind of information that I ought to
22 know, even though I know a lot of that has been provided to
23 the Court at least in written submission. And you can give me
24 a sense of what the Class Representative is going to receive
25 from the settlement agreement and some other terms, and we'll

1 go from there.

2 MR. CECCHI: So, Judge, I want to say on behalf of
3 the plaintiffs' team, myself, Seeger Weiss, RGRD and BLBG,
4 we're certainly proud of the result we've achieved in this
5 settlement and pleased to present it to Your Honor for final
6 approval. We believe it's an outstanding result. It meets
7 all the 23(e)(2) and *Girsh* factors.

8 Let me start by saying this is a four-year-old
9 litigation that was vigorously defended by my friends from
10 Davis Polk and Mr. Griffinger's firm. It was a vigorous
11 defense where they raised significant credible defenses and
12 fought valiantly. There was over 40 depositions that were
13 taken in this case. We went through Class certification, and
14 before Your Honor is a fully briefed summary judgment motion,
15 which I know Your Honor hasn't ruled on, but the record before
16 Your Honor bespeaks, A, the quality of the work that's been
17 done on both sides of the ledger, and B, the complexity of
18 this case. That's one of the factors under 23(e)(2) and *Girsh*
19 that Your Honor has to put into the mix when you're
20 considering if this is fair, reasonable, and adequate.

21 It's also important from our perspective to consider --
22 because Mr. Hedley and Mr. Hollander will touch on this in
23 detail -- suggests that this was not a complex case or this
24 was an easy case. I would suggest to Your Honor that anyone
25 who's done pharmaceutical litigation, either pharmaceutical

1 securities litigation, pharmaceutical patent litigation,
2 pharmaceutical antitrust litigation knows that in general the
3 pharmaceutical space is amongst the most challenging space to
4 work in for plaintiffs' lawyers. It's the most complex. And
5 within that space I would suggest that this case involving
6 insulin pricing, the interplay between the pharmaceutical
7 benefit managers and the manufacturers, list price, net price,
8 what we call kickbacks, what the defendant calls rebates, is
9 highly complex, and the team on the plaintiffs' side of the
10 ledger had to master all of that information, that highly
11 complex pricing information to litigate this case. And I
12 would suggest to Your Honor that we did so professionally and
13 with great skill, the entire team that mastered that complex
14 space.

15 So I would say that the complexity of the case favors
16 the settlement here. The reaction of the Class, what does
17 that tell us? The vast majority of this Class, Judge,
18 consists of institutional investors. You don't have one
19 objection to the settlement or the fee from a single
20 institutional objector. Indeed, you only had one objection,
21 and that's my friend, Mr. Hedley, who only objects to the fee.
22 He doesn't object to the fairness of the settlement. So that
23 is really a very important data point that Your Honor should,
24 we suggest, put into the mix.

25 THE COURT: Mr. Hedley, since I have you today I just

1 want to make sure that nobody is mischaracterizing your
2 position. But you don't object to the actual certification or
3 the Class; you're only objecting to fees, correct?

4 MR. HEDLEY: That's correct, Your Honor.

5 THE COURT: Okay. Go ahead, Mr. Cecchi. That was my
6 understanding as well, but I wanted to confirm that with Mr.
7 Hedley.

8 MR. CECCHI: Great. So the other point that's, I
9 think, under 23(e)(2) and *Girsh* that's really important is
10 this case did not settle early, as Your Honor knows. It only
11 settled after it was fully litigated and both the plaintiffs
12 and the defendants had a full awareness of the risks of
13 liability, risk of damages, and after I think three -- at
14 least three in-person mediation sessions with Layn Phillips.
15 And I mention Layn Phillips -- I should say Judge Layn
16 Phillips. He's a retired United States Attorney from
17 Oklahoma. He's a retired federal judge, and in case he's
18 listening here, which I'm not sure he is, but he is the
19 leading and most outstanding securities mediator in the
20 country. And the settlement only came about after the parties
21 couldn't agree and he made a mediator's proposal. So the
22 involvement of Layn Phillips, the difficulty of those
23 negotiations on the backs of the long, vigorous litigation
24 also goes to the fairness of this settlement.

25 The only other thing I would mention, Judge -- and,

1 again, Mr. Hollander will address in detail Mr. Hedley's fee
2 objection -- is, you know, having done these types of cases in
3 this district for many years, this fee and this settlement is
4 right in the heartland. It's right in the heartland of the
5 types of cases we've resolved. I point Your Honor to the
6 Vytorin and Zetia case, which both Mr. Hollander's firm was
7 involved in and I was involved in and Seeger Weiss was
8 involved in. Twenty-eight percent of the \$215,000,000
9 settlement. AremisSoft, 28 percent of 194 percent -- million
10 dollar settlement. That was our friend Judge Pisano.

11 So I just point that out because really it's -- we're
12 not asking for anything that's not in the heartland. So
13 unless there's other 23(e)(2) factors Your Honor wants me to
14 touch -- I can touch them all -- but I thought that those were
15 the main issues I'd want to bring to Your Honor's attention.

16 THE COURT: Is there anything else you want to put on
17 the record? Do you want to put any additional terms of the
18 settlement on the record?

19 MR. CECCHI: Sure. The settlement, as Your Honor
20 knows, it's a \$100 million dollar all cash, non-reversionary
21 settlement, which is the best type of settlement. We were
22 joking with our friend Mr. Hedley before. You know, that's
23 the premier type of settlement you want. All cash,
24 non-reversionary. We had the best possible notice, direct
25 mail notice, and again not one institutional objector who owns

1 these ADRs objected to it. The plaintiff allocation -- Mr.
2 Hollander can discuss or Mr. Brooks -- is the typical plan
3 under securities cases. It's fair. It doesn't treat anyone
4 differently, and it measures the Class Members' damages using
5 expert -- our expert's analysis. So it's what is done
6 normally and usually in securities cases. So I would suggest
7 that \$100 million dollars is an adequate -- more than adequate
8 resolution. And as we pointed out in our brief, relying upon
9 Cornerstone Research, it's higher than the mean and average of
10 many of the securities cases where the theoretical maximum
11 damages are over a billion dollars.

12 So we think it's fair. We think it's a great result.
13 And, again, I'll end where I started: we're proud to present
14 it to Your Honor.

15 THE COURT: Thank you, Mr. Cecchi. I'm not going to
16 get to Mr. Hollander just yet because I still want to hear
17 from defense counsel as well with respect to their position on
18 the settlement, but we will get to fees.

19 From defense counsels' perspective on behalf your
20 clients, do you approve of the settlement, agree with the
21 terms? Who's speaking on behalf of the defense?

22 MR. HOLLANDER: Very quickly, Your Honor. I'm sorry
23 to interrupt. I was hoping to put a bit more on the record
24 about the notice program that we also believe fully supports
25 the settlement.

1 THE COURT: Sure.

2 MR. HOLLANDER: As Your Honor noted, on March 8th the
3 Court granted preliminary approval of the settlement.
4 Following that order we worked with the claims administrator
5 JND Legal Administration. Claims administrator mailed notice
6 packets to over 378,000 possible Class Members. There was an
7 initial mailing on March 29th of this year as well as
8 supplemental mailings through May 20th, 2022. Those notice
9 packets went out to the approximately 350,000 potential Class
10 Members who received Class notice following the Court's Class
11 certification order earlier in the case as well as additional
12 possible Class Members that were identified by the
13 administrator in response to those notice packets going out as
14 well as the summary notices that were published in *The Wall*
15 *Street Journal*, *PR Newswire* and *Investors Business Daily* as
16 well as the settlement website that we set up along with the
17 claim's administrator to provide key information about the
18 case. And then once preliminary approval was granted came
19 information about the settlement and the settlement process.
20 There were no objections to the settlement, no objections to
21 the final allocation, and the one objection from Mr. Hedley to
22 the fees. We believe the response of the Class in response to
23 that extensive notice program fully supports plaintiffs'
24 application here today.

25 THE COURT: Thank you, Mr. Hollander. I appreciate

1 that.

2 From defense counsel, anybody chiming in here?

3 MR. GRIFFINGER: It's Mike Griffinger. I'm going to
4 defer to Mr. Potischman who is involved with the settlement
5 negotiations, Your Honor.

6 THE COURT: Thanks, Mr. Griffinger.

7 Mr. Potischman, are you on?

8 MR. POTISCHMAN: I am. Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MR. POTISCHMAN: Your Honor, we fully endorse
11 approval of the settlement. Beyond what's already been noted
12 about the lack of objections, I'll just note for the record as
13 reflected in docket 358, CAFA notice went out to 57 government
14 officials in accordance with the settlement and in accordance
15 with federal law, and there have been no objections,
16 obviously, lodged by any government officials, either state or
17 federal as well. So we fully endorse approval of the
18 settlement, Your Honor.

19 THE COURT: All right. All your clients' concerns
20 have been addressed, I presume?

21 MR. POTISCHMAN: Correct, Your Honor.

22 THE COURT: Is the Class Representative on?

23 MR. HOLLANDER: No, Your Honor. We don't have any
24 representatives present from the Lead Plaintiffs themselves.

25 THE COURT: Can you represent that they have no

1 concerns regarding the proposed settlement? I presume you
2 can.

3 MR. HOLLANDER: Yes, Your Honor. That is also
4 reflected in the declaration from each of the five Lead
5 Plaintiffs that were attached to the final approval papers
6 fully supporting the settlement and fee request.

7 THE COURT: The Court has those documents, so I'll
8 accept that.

9 Mr. Hedley, do you want to at this point -- I know I've
10 received your written submission, but do you want to address
11 your objection now and the basis for it? I'll probably have
12 to hear from at least Mr. Hollander subsequent to you, but
13 I'll give you an opportunity now to raise your objection and
14 the basis.

15 MR. HEDLEY: Surely, Your Honor. So, you know, I
16 think my initial filing speaks for itself, but in the 30 pages
17 of the reply there was not one reference to the operative
18 statute, and the operative statute is mandatory language. And
19 the fees need to be or shall be reasonable in comparison to
20 what the Class Members are actually paid.

21 In this situation, if the Class -- if Class counsel
22 gets their wish of a 29 percent fee on top of the expenses
23 that they are also seeking, that will essentially amount to
24 them and their fees and their awards to -- to the Class
25 Representatives essentially amounting to 47 or 48 percent of

1 what the Class Members will get. And at this point we don't
2 really know what the Class Members are going to get because we
3 haven't seen any of the claims data, and they want to be paid
4 up front.

5 You know, I do want to point out that in their response
6 to my objection there was some, I would say, somewhat
7 disingenuous allusion to the fact that I cited out-of-circuit
8 cases when their reply had multiple citations to non-Third
9 Circuit cases, district court cases outside the Third Circuit.

10 THE COURT: The Court is well aware of what's binding
11 on me and what's persuasive, so I'm not too concerned about
12 where you guys are citing from as long as you're going to give
13 me some direction to point out. I appreciate that. I think I
14 can safely say I know what I'm bound to follow and what I can
15 ignore or consider.

16 MR. HEDLEY: I'm sure, Your Honor. I didn't mean to
17 allude that you didn't, but I just wanted to focus on the
18 Third Circuit case that I think is somewhat illustrative here,
19 which is the AT&T case, which was also a
20 hundred-million-dollar award and the damages were 25 percent
21 of what was alleged. That case moved further into litigation,
22 actually went to summary judgment, and the fee award was far
23 closer to what I'm advocating for in that case. Exact same
24 amount, a hundred million dollars, and a far better result to
25 the Class Members than what was achieved here in terms of what

1 will actually be distributed to the Class. And that fee award
2 was far less than the 29 percent that counsel is seeking. So
3 if we're going to point to and rely on Third Circuit case law,
4 I think that *AT&T* case is very illustrative and an excellent
5 guide in terms of where this fee award should come down.

6 THE COURT: Anything further, Mr. Hedley? I don't
7 want to cut you off. I didn't know if that was a pause. I
8 have your submission, but I didn't know if there was anything
9 else you wanted to put on the record.

10 MR. HEDLEY: Not right now, Your Honor. I guess I
11 would reserve to what Mr. Hollander has to say. But I'm happy
12 to address any other issues or concerns that the Court might
13 have with respect to the objection, but for now I will keep my
14 powder dry.

15 THE COURT: All right. Fair enough.

16 Mr. Hollander, I presume you're going to respond to the
17 objections, but it may also make sense for you to just put on
18 the record a little bit more about how the fees will be paid
19 and what the rates were and how you guys came to those fees
20 and all the rest of it. I'll leave it to you on kind of how
21 you want to respond to the objection.

22 MR. HOLLANDER: Yes, Your Honor. What I'd like to do
23 first is briefly address generally the factors that we believe
24 support the fee application and then respond to some of the
25 points that Mr. Hedley made.

1 Regarding fee and expense application generally,
2 counsel, as Mr. Cecchi discussed earlier, litigated this case
3 vigorously for over four years prior to reaching the
4 settlement, and we believe the extensive work that went into
5 the case as well as the excellent result for the Class fully
6 supports the fee and expense application.

7 I want to just begin, you know, very basically with the
8 percentage method which is commonly accepted within this
9 district as a method to determine the award of attorneys'
10 fees. It's been blessed by the Third Circuit. We cite cases
11 extensively at pages 8 to 9 of our fee brief. Here the 29
12 percent request is squarely within the range of percentage
13 fees awarded in the Third Circuit and in this district in
14 comparable cases. I would point specifically to the *Icon* case
15 where there was a 30 percent award on a \$111 million dollar
16 settlement. The *Icon* case similarly cites other cases and
17 notes that awards of 30 percent are not uncommon in securities
18 class actions as well as numerous other cases that we've cited
19 in our briefing.

20 Second, the fee request is eminently reasonable when
21 cross-checked against the lodestar of counsel. In regard to
22 Your Honor's question concerning rates, I believe it's
23 appropriate and helpful to look at the lodestar information,
24 which is detailed in the declarations of counsel, attached to
25 our final approval papers. As Your Honor, I'm sure, can

1 imagine, over the course of four-plus years, including over 40
2 fact depositions, ten expert depositions, summary judgment
3 briefing being fully complete, extensive contention,
4 interrogatory responses and other work that was done, Class
5 certification briefing, the appeal to the Third Circuit, under
6 Rule 23(f) of the Class certification order there was quite a
7 bit of work that was involved as well as reviewing over five
8 million pages of documents. The work that went into the case
9 was reasonable and necessary in furtherance of securing a
10 maximum recovery for the Class. Although the percentage
11 method is what is appropriate, we believe that the lodestar
12 which shows a negative multiplier reflecting less than half of
13 the value of the time that counsel spent on the case fully
14 supports why the fee is reasonable, particularly in light of
15 the risks that counsel took working on contingency that at the
16 end day there may be little or no fee available to counsel.

17 I do want to speak a little bit to the risks of the
18 case and the complexity of the case. Mr. Cecchi already
19 addressed some of the complexity of the issues with the
20 pharmaceutical industry and pricing issues in that industry.
21 In addition, just very specific to this case, the discovery
22 record revealed a substantial amount of risk that we believe
23 we faced at summary judgment and further if we were to try
24 this case to a jury. By way of brief background, there were
25 three categories of false statements that we alleged in this

1 case. One concerned the financial guidance that Novo Nordisk
2 issued. One concerned Novo Nordisk's exposure to the same
3 market pressures that its competitors face, and one concerned
4 a new drug that Novo Nordisk had coming to market called
5 Tresiba® and its ability to drive growth and earnings for the
6 company. With respect to each of those, there were
7 substantial risks regarding proving liability because the
8 company met its guidance, because the company had made certain
9 disclosures regarding its exposure to market pressures, and
10 because Tresiba®, in at least certain circumstances, did get
11 the market access at premium pricing that defendants had
12 tolled the market. In addition, we believe there was
13 substantial risk concerning loss, causation, and damages
14 issues. Defendants argued at summary judgment and had strong
15 expert reports supporting arguments that any market declines
16 in response to the alleged corrective disclosures were not, in
17 fact, caused by what we alleged were the false statements and
18 the truth coming to light but by other matters. And if the
19 jury were to agree with defendants on those points, and very
20 well-qualified experts on both sides that was certainly
21 possible, there is the risk that the damages that we could
22 prove, even if we proved liability, would have been far less
23 or even zero.

24 With regard to what we believe was the strongest
25 argument we had on loss causation or the particular corrective

1 disclosure that we believe we had the strongest arguments on,
2 it was concerning the drug Tresiba®. The expert's analysis
3 was that damages traceable to that corrective disclosure were
4 approximately \$350 million dollars. Against that the \$100
5 million dollar settlement is, you know, an excellent result.
6 We believe it's an excellent result even against the over a
7 billion dollars of maximum damages if we succeeded on every
8 argument with regard to liability and damages.

9 So I wanted to point that out because this was not an
10 instance, despite some of the suggestions in Mr. Hedley's
11 papers, where we got over a motion to dismiss and essentially
12 there was a foregone positive conclusion. The litigation was
13 hard fought every step of the way. We had three in-person
14 mediation sessions over the course of several years. One
15 after the motion to dismiss was decided. One after Class
16 certification was decided. Both of those were ordered by the
17 Court. Neither of those were successful or even productive in
18 the slightest, to be honest, without saying more to violate
19 the mediation privilege. The third was not successful either,
20 but after some continued hard work from the mediator and from
21 both sides, we were eventually able to reach a resolution
22 pursuant to the mediator's recommendation, and that reflected
23 the strength and the risks of both sides of the case. And so
24 we believe that that amply supports all the work that went
25 into the case and the fee request that's here today.

1 I will now turn to some of the claims that Mr. Hedley
2 raised. You know, he -- and respectfully many of the points
3 in Mr. Hedley's objection appear to concern Class action,
4 attorneys' fees, more broadly. As Your Honor is aware, and as
5 we detail in our papers, any award of fees here should be
6 determined based on the particular factors present in this
7 case. And, respectfully, to the extent that Mr. Hedley
8 addresses factors in this case, he appears to mischaracterize
9 or misunderstand much of the litigation and much of the terms
10 of the settlement and the plan of allocation. He, this
11 morning, began with the language of the PSLRA regarding
12 attorneys' fees and what is actually paid to the Class. And I
13 believe it's helpful to point to case law with courts
14 construing that language to refer to the amount of recovery
15 that the Class received in the settlement, which here is the
16 \$100 million dollars cash that was received in the settlement.
17 If Your Honor were to look at the *Rite Aid* case from the Third
18 Circuit, and that's at 396 F.3d 294 at page 100, it refers to
19 that provision of the PSLRA as to how the percentage of the
20 recovery method was incorporated in the PSLRA.

21 In addition, I would point to -- there was a case
22 called *In re: Bank America Corporation* out of the Eighth
23 Circuit. The citation is 15 F.4th 865 at page 872. It's a
24 2021 case citing the legislative history of the PSLRA and
25 discussing this provision as concerning a reasonable

1 percentage of the amount of recovery awarded to the Class and
2 declining to base attorneys' fees in that matter on the amount
3 paid out in the distribution process. So we believe that's
4 fairly on point, that the statute does not require any other
5 approach by this Court. And other courts to consider the
6 question are in accord as well.

7 I will also address Mr. Hedley's concerns about the
8 quick-pay provision, what it's colloquially referred to as,
9 the quick-pay provision upon which attorneys' fees would be
10 paid out on approval of the settlement by Your Honor. These
11 provisions are somewhat standard in securities Class action
12 settlements, particularly where -- here it is an all cash
13 settlement without any reversion. We believe they are
14 appropriate to reflect the risks or to address the risks that
15 plaintiffs' counsel has taken by litigating this matter on a
16 fully contingent basis for as long as we have here as well as
17 there are provisions in the settlement agreement requiring us
18 to repay within 30 days any amount that is later reversed or
19 otherwise reduced, and we would, of course, comply with that.
20 And in no way does the application of the quick-pay provision
21 reduce any amount that is available to the Class or change the
22 timing of payment to the Class.

23 So for those reasons we don't believe that Mr. Hedley's
24 concerns, you know, in any way undermine or argue against
25 granting of the fee consistent with the terms that are in the

1 settlement agreement and before Your Honor.

2 THE COURT: Thank you, Mr. Hollander.

3 Mr. Hedley, do you have any additional response that
4 you want to provide to the Court? I didn't know if you did or
5 not. I'll give you that opportunity at this time.

6 MR. HEDLEY: Yes, Your Honor. I appreciate a chance
7 to respond.

8 Again, I would just say if we're going to talk about
9 comparable cases I would point to the AT&T case as being the
10 most comparable case in the Third Circuit in terms of what was
11 achieved for the Class, and that's what we should be focused
12 on here. What was achieved for the Class in that case was 25
13 percent of the alleged damages, and the fee award was far
14 lower than what Class counsel is seeking here.

15 I will also note that the language of the statute is
16 pretty clear. It says total attorneys' fees and expenses
17 awarded by the Court to counsel for the plaintiffs' Class
18 shall not exceed a reasonable percentage of the amount of any
19 damages and prejudgment interest actually paid to the Class.

20 That \$100 million dollars is not going to be paid to
21 the Class. We're going to have already expenses being taken
22 out, awards to Class Representatives, the fee award for
23 counsel. Those are the things that need to be looked at to
24 what is actually paid to the Class, and that's what the
25 statute requires. What Mr. Hollander's referring to is

1 essentially, yes, the PSLRA essentially blessed the percentage
2 of recovery method as the preferred method for paying
3 attorneys' fees, but it needs to be done in relation to what
4 is actually paid to the Class. Class counsel has a fiduciary
5 duty to those Class Members, and when they're claiming 47 or
6 48 percent of what is actually going to the Class, I would
7 argue that that's not doing a very good fiduciary job for the
8 Class. And so I think that is something to really focus on
9 here is that that's what the statutory language requires.
10 That is the plain language of the statute, very easy
11 interpretation of the statute in using the percentage of
12 recovery method.

13 So that -- I just wanted to actually kind of note a
14 couple other points, Your Honor. Yes, I am the only objector.
15 Given the small amounts based on what was disclosed in their
16 notice and plan of allocation, again, those things are
17 required by the PSLRA to actually inform Class Members, and
18 based on their own notice. I didn't prepare it; they prepared
19 that notice. Their expert helped prepare that notice, and it
20 basically showed that the recovery was going to be far less
21 than, say, the *AT&T* case based on their computation of the
22 \$100 million dollar and how that would be distributed across
23 the Class and then how the fee award and expenses were going
24 to be distributed across the Class. And that essentially
25 dramatically lowered what Class Members would be receiving.

1 And that's all in the notice. That's required by the PSLRA
2 for folks like me or other Class Members to evaluate what are
3 we going to get out of this. And so I think that is somewhat
4 informative of the fact when they make a big deal out of the
5 fact that there aren't a lot of objectors --

6 THE COURT: I don't think they're making a big deal.
7 Look, it's a factor that the Court is going to consider. Mr.
8 Hedley, you're the only objector that is objecting to the
9 fees. I mean, the law requires me to consider that. It's
10 something the Court can consider, and I'm going to have to
11 consider it.

12 MR. HEDLEY: I understand that, Your Honor, but I
13 would also just note that silence is not necessarily
14 acceptance. These institutional investors aren't from a
15 practical perspective --

16 THE COURT: I'm not here to presume that there are
17 another hundred objectors out there that didn't show up today
18 and filed an objection with the Court. I'm not going to make
19 that finding.

20 MR. HEDLEY: I'm not suggesting you would, Your
21 Honor. I'm just suggesting as a practical matter
22 institutional investors aren't going to go out and hire
23 counsel to object to then get a few more cents on the dollar,
24 which is what we're talking about here, Your Honor.

25 THE COURT: All right.

1 Mr. Cecchi, do you want to voice anything? I don't
2 know if that finger is for me or one of your counsel. You're
3 on mute.

4 MR. CECCHI: Very briefly, I would suggest that the
5 math that Mr. Hedley is doing is just sleight of hand. We all
6 can do math. We all can subtract from the common fund some
7 numbers and say, ah, it's only 50 percent. You're seeking a
8 50 percent fee. That's just smoke and mirrors. The recovery
9 for the Class here is \$100 million dollars. The case law that
10 Mr. Hollander cited and routinely in this district is that's
11 the recovery, and the fee is routinely determined based upon
12 that recovery. If I had one client in this case and I
13 recovered a \$100 million dollars, my fee would be calculated
14 off that \$100 million dollars. Not after subtracting whatever
15 Mr. Hedley wants to subtract, notice, costs. It's just --
16 it's routinely not done that way and it's not the way it
17 should be done. The work before Your Honor, the record before
18 Your Honor, this four years of this true warfare in this case
19 more than supports this fee.

20 As Mr. Hollander pointed out, it's a negative
21 multiplier. I would much rather be here today, Judge, asking
22 you to award a five multiplier instead of a negative
23 multiplier. We did the work because we had to do the work.
24 The lodestar cross-check more than supports this fee request
25 under the percentage of the fund. So I suggest his position

1 just sounds good when you do math like that, but it's not the
2 math that should be done here. Thank you, Judge.

3 THE COURT: All right. I think -- I don't know what
4 these hand gestures are. Do you want to say something? I
5 will tell you all that primarily almost everything that's
6 being told to me has also been submitted in writing to the
7 Court. I promise you that in our district court we read all
8 your papers. So I am well aware of the arguments. They're
9 all familiar to me, and I will tell you, if anything, I've
10 delayed a little bit of this hearing based on scheduling
11 conflicts. So I'm prepared to make some findings and
12 conclusions today so that we're not delaying this any further.

13 Notwithstanding that, Mr. Hollander, I don't want to
14 cut you off. I will allow you a brief opportunity to say
15 something, but let's make it quick.

16 MR. HOLLANDER: That's fine, Your Honor, and I
17 appreciate that. The one last thing I was going to respond to
18 is on the AT&T case just pointing out that the multiplier in
19 that case was a positive multiplier of 1.28 reflecting -- or
20 which supported the finding that the fee awarded there was
21 reasonable here where we have a negative multiplier. I would
22 say that that factor cuts slightly differently. Otherwise,
23 Your Honor, I will leave it at that.

24 THE COURT: All right. Listen, I want to thank you
25 all. I appreciate your time, and again I appreciate your

1 patience. And like I just mentioned a moment ago, I think
2 there's been enough delay. I think after plaintiffs'
3 briefings, the declarations, the correspondence from counsel,
4 getting defense counsel's position, hearing from Mr. Hedley
5 directly today as well as his written submission on his
6 objections, I'm prepared to enter my findings and conclusions
7 on the record now.

8 For efficiency I will tell you all I will not be
9 reading citations, but they will be inserted into the
10 transcript later so that you can see them there. You can
11 obtain a copy of the transcript by contacting my court
12 reporter. So don't call me; don't call my law clerks. Call
13 the court reporter, request the transcript if that is
14 something that you deem appropriate, and she will be able to
15 connect with you and touch base with you on that.

16 Having reviewed plaintiffs' motion for final approval
17 of the Class action settlement and all other pleadings,
18 documents and testimony, or at least positions of counsel that
19 were provided today in declarations, this Court is satisfied
20 that the terms of the settlement agreement are fair,
21 reasonable, and adequate.

22 First, the Court will address the certification of the
23 Class. Specifically, this Court finds that the settlement
24 Class meets all the necessary Rule 23(a) and (b) requirements
25 for certification and settlement purposes. The parties have

1 proposed certification of the following Class: all persons and
2 entities who purchased or otherwise acquired Novo American
3 Depositary Receipts ("ADRs") between February 3rd, 2015
4 through February 2nd, 2017, inclusive. The Court finds that:

5 (1) the proposed Class is so numerous that joinder of
6 all members of the Class is impracticable, Fed. R. Civ. P.
7 23(a)(1);

8 (2) there are questions of law or fact that are common
9 to the Class, Fed. R. Civ. P. 23(a)(2);

10 (3) the Class Representatives' claims are typical of
11 the claims of the other Class Members, and they will fairly
12 and adequately represent and protect the interests of the
13 Class Members, Fed. R. Civ. P. 23(a)(3), (4);

14 (4) questions of law and fact common to Class Members
15 predominate over any questions affecting only individual
16 members, Fed. R. Civ. P. 23(b)(3);

17 (5) this class action is the superior method for
18 efficiently adjudicating the claims asserted, *id*;

19 (6) counsel have demonstrated that they are qualified
20 to serve as Class counsel, Fed. R. Civ. P. 23(g); and

21 (7) notice to the Class has been properly and
22 adequately provided to potential Class Members in accordance
23 with this Court's Preliminary Approval Order and Rule 23, see
24 Fed. R. Civ. P. 23(c)(2). (See also ECF No. 344)

25 The Court, accordingly, certifies this Class for the

1 purposes of settlement.

2 If I'm going a little fast, again, you can get a
3 transcript of this, and so contact my court reporter.

4 Next, the Court will certify the lead plaintiff and
5 Class counsel. For the purposes of the settlement only, the
6 Court certifies Lehigh County Employees' Retirement System,
7 Oklahoma Firefighters Pension and Retirement System, Boston
8 Retirement System, Employees' Pension Plan of the City of
9 Clearwater, and Central States, Southeast and Southwest
10 Pension Fund as Class Representatives for the Class and
11 appoints Counsel Robbins Geller Rudman & Dowd LLP and
12 Bernstein Litowitz Berger & Grossmann LLP, as Class Counsel
13 for the Class.

14 Certification of the settlement amount. Third, the
15 Court will certify the settlement amount. As for the proposed
16 settlement, the Court finds the \$100 million dollar cash
17 payment is fair and reasonable based on the surrounding
18 circumstances and complexity of this matter. The Court is
19 satisfied that the settlement agreement, as outlined by
20 counsel on the record, is fair, reasonable, and adequate to
21 the Class Members in light of the complexity, expense, and
22 duration of this litigation and the risks involved with going
23 to trial and demonstrating liability and damages. As
24 supported by counsel's showing on the record and in briefing,
25 the proposal was negotiated at arm's length between

1 experienced counsel, see Fed. R. Civ. P. 23(e) (2) (B); there
2 would be significant costs, risks, and delay if this case were
3 taken to trial, see Fed. R. Civ. P. 23(e) (2) (C) (i); the
4 proposed settlement treats Class Members equitably relative to
5 each other, see Fed. R. Civ. P. 23(e) (2) (D); the proposed
6 settlement automatically distributes funds to the Class
7 Members without requiring an onerous claims process, see Fed.
8 R. Civ. P. 23(e) (2) (C) (ii); and agreements made with Class
9 Representatives in connection with the proposal do not raise
10 concerns that the proposed settlement was improperly
11 negotiated or agreed to, see Fed. R. Civ. P. 23(e) (2) (C) (iv).
12 The Court also finds fair and reasonable the award of
13 \$40,019.05 for the Class Representative given its active role
14 in this action. See 15 U.S.C. § 78u-4(a) (4).

15 Fourth, the Court will address the attorneys' fees and
16 the objector's concerns. Based on Class counsel's request for
17 an award of attorneys' fees and litigation expenses, as well
18 as the positions and arguments made here today in court, the
19 Court finds fair and reasonable the attorneys' fees in the
20 amount of \$29,000,000 (which represents 29 percent of the
21 settlement fund). The Court also finds \$2,738,023.93 in
22 litigation expenses and costs are fair and reasonable. Fed.
23 R. Civ. P. 23(e) (2) (C) (iii).

24 Moving Brief

25 A. Objection to the fee and Plan of Allocation.

1 As for the objector's concerns, Hedley first argues
2 that the fee request is unreasonable in several ways.
3 (Objector Moving Br. at 4, ECF No. 354-1.) He contends that
4 the fee request is unreasonably disproportionate to the
5 overall settlement amount because counsel's fee request is
6 based on a calculation that includes millions of dollars which
7 will not be paid to the Class. (*Id.* at 5.) Specifically, he
8 contends that the gross settlement amount should have been
9 adjusted to exclude expenses associated with the settlement
10 and the fee request of 29 percent should be based on the
11 adjusted gross settlement fund. (*Id.*) Hedley further argues
12 that the expense amount is therefore misleading and was not
13 properly calculated. (*Id.* at 6.) Hedley asserts that the fee
14 percentage is excessive in light of the overall settlement
15 amount. (*Id.*) He posits that the settlement amount should
16 consider economies of scale to prevent a windfall for
17 plaintiffs' attorneys at the expense of the Class. (*Id.*)
18 Hedley argues, based on empirical data he cites, that the
19 attorneys' fees in a case with a similar settlement, exceeds
20 the typical median of 25 percent. (*Id.* at 7-8.)

21 Hedley also contends the Plan of Allocation is flawed
22 because the per share damage recovery computed by plaintiffs
23 is trivial compared to the damages arising from defendants'
24 alleged fraudulent conduct. (*Id.* at 8.) Hedley argues the loss
25 amounts highlighted in the Plan of Allocation is not

1 reasonably related to the damages suffered by the
2 shareholders. (*Id.*) As it relates to him, Hedley argues that
3 the loss amount calculation, for example, does not accurately
4 represent his loss and his damages. (*Id.* at 9-10.)

5 Moreover, Hedley asserts plaintiffs' counsels do not
6 provide any data to support their calculation that 6.7 percent
7 represents the recovery for the Class, concluding that
8 percentage only fairly compensates the Class Representatives
9 but not the whole Class and that the figure is misleading.
10 (*Id.* at 10-11.) Hedley also argues that the settlement does
11 not adequately reflect each Class Members' loss, explaining
12 that some members who did not suffer as great a financial loss
13 will now receive a greater recovery than others whose losses
14 were greater. (*Id.* at 11.) In essence, Hedley contends that
15 the damage amount each investor will receive is not in parity
16 with the fees the attorneys will receive. (*Id.* at 11-12.)
17 Hedley suggests the primary beneficiaries of the settlement
18 are plaintiffs' counsels and not the Class Members. (*Id.* at
19 12.)

20 Next, Hedley contends the case was not excessively
21 complex, risky, or unique that might justify the upper range
22 fee plaintiffs' counsels are seeking. (*Id.* at 13.) He argues
23 the allegations were straightforward and the time it took to
24 resolve the claims were not exceptionally long to justify the
25 fees. (*Id.*)

1 Third, Hedley contends the Court should not consider
2 the minimal number of objectors because some investors who may
3 want to object do not have the resources or knowledge to do
4 so. (*Id.* at 14.)

5 Fourth, Hedley argues that plaintiffs' counsels mislead
6 the Court by characterizing the 29 percent fee request as
7 "normally negotiated" because one plaintiffs' counsels
8 routinely negotiate fee requests less than what is at issue.
9 (*Id.*) He contends that in the cases where fee requests have
10 exceeded 25 percent, which he argues is standard, has been
11 partly because there was a sliding-scale fee arrangement.
12 (*Id.*)

13 Fifth, Hedley contends the fee request fails to
14 disclose how the fees will be allocated and the fee petition
15 gives counsel unchecked authority on how to allocate the fees.
16 (*Id.* at 15.) Hedley highlights that the six law firms who
17 stand to benefit from the fee request sought a single lump sum
18 as opposed to a more individual award, raising some
19 pay-to-play concerns and requesting that the Court require
20 disclosure of the allocation and allocate the fees itself.
21 (*Id.* at 17-18.)

22 Sixth, Hedley argues plaintiffs' counsels' immediate
23 request for payment of fees and expenses violates the Private
24 Securities Litigation Reform Act ("PSLRA") because the Class
25 should be paid before the attorneys. (*Id.* at 19.) Hedley

1 proposes that the Court only award attorney fees and expenses
2 after the Class has been paid. (*Id.*)

3 Last, Hedley contends that plaintiffs' counsels
4 misjudged the value of the case at \$1 billion, and the hours
5 expended by the attorneys did not yield the results they had
6 predicted. (*Id.* at 20.) Hedley posits that plaintiffs'
7 counsels' repeated acknowledgment of the strength of
8 defendants' case was a concession of the difficulties of their
9 case. (*Id.*)

10 Reply

11 First, plaintiffs' counsels begin by arguing that the
12 settlement should be approved in light of the overwhelming
13 positive reaction from the Class. (Pl.'s Reply at 1, ECF No.
14 357.) Counsel contends that 378,728 copies of the settlement
15 notice were sent to potential Class Members and nominees, and
16 now that the deadline for objections has passed there has not
17 been any objections to the Settlement or Plan of Allocation.
18 (*Id.* at 2.) Instead, they note that there was a sole objector,
19 and their objection is not to the settlement but to the
20 attorneys' fees, which they contend is significant. (*Id.*)
21 Counsel further contends attorneys' fees should be awarded
22 because the "final total amount requested for litigation
23 expenses . . . is lower than the total amount reserved in the
24 Settlement Notice." (*Id.* at 3.) Counsel also argues their fee
25 request is reasonable in light of the result achieved, their

1 skills and experience, and the contingency basis of the fees.
2 (*Id.* at 4.)

3 Second, plaintiffs' counsels assert that significantly
4 there were no institutional objectors, even though there were
5 more than 1,200 institutions involved in the suit. (*Id.* at 5.)
6 Plaintiffs' counsels contend Hedley's objection is boilerplate
7 in that the argument -- that the settlement could be higher
8 and the fee smaller -- could be launched for any claim for
9 attorneys' fees. (*Id.* at 6.) Plaintiffs' counsels argue the
10 objector's concern, which is not with the settlement itself,
11 is unfounded because he miscalculates the impact of the fee
12 award. (*Id.*)

13 Third, plaintiffs' counsels assert, contrary to
14 Hedley's suggestion, courts nationwide regularly award
15 percentage fee awards in securities class actions based on the
16 settlement amount, inclusive of expenses. (*Id.* at 8.)

17 Fourth, counsel further argues Hedley's assertion that
18 a lesser fee percentage should apply is unwarranted because
19 courts should perform a case-specific assessment of whether a
20 fee decline is necessary. (*Id.* at 9.) Moreover, they argue
21 courts have recognized Hedley's "proposed declining fee
22 structure would likely result in lower net Class recoveries
23 because it disincentivizes counsel to assume the higher risk
24 of pursuing higher settlements, misaligning the interests of
25 Class counsel and the Class." (*Id.* at 10.) Counsel also

1 contends the settlement amount is above the average recovery
2 within our circuit and argues Hedley's supporting statistical
3 data does not support his position. (*Id.* at 11.) Counsel
4 posits Hedley's statistical support underscores the amount
5 recovered, and they state the percentage recovered is
6 respectively 20 percent and 34 percent higher than the median
7 within this circuit and national median for cases of any size.
8 (*Id.* at 11-12.)

9 Fifth, counsel contends, contrary to Hedley's
10 assertion, the Class Members' recovery, specifically Hedley's,
11 will not be inadequate because Hedley's own recovery will be
12 greater than the average as Hedley purchased and retained his
13 damaged ADR when it had the highest artificial inflation. (*Id.*
14 at 13.) Moreover, counsel argues that courts generally uphold
15 pro rata distributions as is the case here. (*Id.*)

16 Sixth, plaintiffs' counsels also reject Hedley's
17 position that investors whose market losses are greater should
18 recover more. (*Id.*) They posit that those investors' claims
19 are limited because they may only recover losses caused by the
20 fraud. (*Id.*)

21 Seventh, counsel argues the settlement does not in any
22 way harm current holders of Novo Nordisk ADRs. (*Id.* at 15.)
23 They additionally argue the minimum distribution of \$10 is
24 reasonable and appropriate in light of the fact courts have
25 upheld minimum distributions similar to this one. (*Id.* at 16.)

1 Eighth, rejecting Hedley's position, counsel contends
2 the settlement was a product of extensive and complex
3 litigation, highlighting that there were complicated issues
4 and risks involved in this litigation and that Hedley fails to
5 address any of them. (*Id.* at 17.) Here, counsel highlights
6 that the mediator, a former federal judge, and former U.S.
7 Attorney, reviewed the settlement in its entirety and approved
8 of it, and in doing so, recognized that it was a large and
9 complex case. (*Id.* at 18.) Counsel also highlights that the
10 pandemic's effect, requiring the use of remote interactions
11 and proceedings in this case, also adds to the case's
12 complexity. (*Id.*) Counsel states the sophistication of the
13 lead plaintiffs and institutional investors, all of whom
14 approved the settlement, also supports their understanding of
15 the duration and complexity of the case. (*Id.*) Counsel
16 summarily rejects Hedley's contention that the fee was not
17 justified because the risk of litigation was limited after the
18 case survived the motion to dismiss stage, noting that this
19 argument discounts counsels' efforts in this case and contrary
20 to Third Circuit precedent, the fact that a case proceeds
21 longer favors attorneys' fees. (*Id.* at 19.)

22 Plaintiffs' counsels strongly assert that its fees are
23 well within the market range citing a host of cases in
24 support. (*Id.* at 19-20.) Even though they acknowledge there
25 are cases where fees are lower, they nonetheless assert this

1 case's complexity and result warrant the fee. (*Id.* at 21.)

2 Plaintiffs' counsels also posit that lead counsel will

3 adequately allocate the attorneys' fees consistent with the

4 leadership structure the Court ordered at the outset of the

5 case. (*Id.* at 22.) Counsel further rejects the need for a

6 disclosure of the proposed allocation, arguing that it is

7 neither necessary nor supported by precedent. (*Id.* at 23.)

8 Counsel also contends its fees should be paid upon the Court's

9 granting of the award because it is standard practice and

10 helps prevent meritless objections. (*Id.* at 24-25.)

11 Additionally, counsel adds that for four years they have

12 litigated the case without payment and that courts have

13 routinely rejected this objection. (*Id.* at 26-27.)

14 To conclude, plaintiffs' counsels reject that they

15 "misjudged" the case. (*Id.* at 27.) They argue that they are

16 "skilled lawyers" who after considering all factors determined

17 that \$100 million dollars represented a fair value of the

18 case. (*Id.*) Counsel notes that Hedley seemingly conflates the

19 value of the case with the estimated damages of the case,

20 which they contend are two separate measures. (*Id.* at 28.)

21 Last, counsel states they did not engage in unnecessary

22 discovery and the lengthy discovery is in fact evidence of the

23 case's complexity. (*Id.* at 29-30.)

24 I am not going to repeat the arguments of the objectors

25 and the defense counsel. I think you guys have articulated

1 that fairly clearly on the record today, so I'm not going to
2 repeat them. I also believe very similar arguments, if not
3 almost verbatim, were placed in the written submissions to the
4 Court. So for purposes of placing your arguments on the
5 record regarding attorneys' fees and costs, I will refer
6 simply to the written submissions to the Court and what you
7 have verbally provided to the Court today.

8 In reviewing an attorneys' fees award in a class action
9 settlement, the Third Circuit looks at a number factors known
10 as the "*Gunter* factors" and the "*Prudential* factors." *In re*
11 *AT&T Corp.*, 455 F.3d 160, 166(3d Cir. 2006). The *Gunter*
12 factors include:

13 (1) the size of the fund created and the number of
14 persons benefited;

15 (2) the presence or absence of substantial objections
16 by members of the Class to the settlement terms and/or fees
17 requested by counsel;

18 (3) the skill and efficiency of the attorneys involved;

19 (4) the complexity and duration of the litigation;

20 (5) the risk of nonpayment;

21 (6) the amount of time devoted to the case by
22 plaintiffs' counsel; and

23 (7) the awards in similar cases.

24 The *Prudential* factors also include:

25 (1) the value of benefits accruing to the Class Members

1 attributable to the efforts of Class counsel as opposed to the
2 efforts of other groups, such as government agencies
3 conducting investigations,

4 (2) the percentage fee that would have been negotiated
5 had the case been subject to a private contingent fee
6 agreement at the time counsel was retained, and

7 (3) any "innovative" terms of settlement.

8 In cases involving extremely large settlement awards,
9 district courts may give some of these factors less weight in
10 evaluating a fee award. See *In re Cendant Corp. Litig.*, 264
11 F.3d 201, 283 (3d Cir. 2001); *In re Prudential Ins. Co. Am.*
12 *Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir.
13 1998). What is important is that in all cases the district
14 court "engage in robust assessments of the fee award
15 reasonableness factors," *In re Rite Aid Corp. Sec. Litig.*, 396
16 F.3d 294, 302 (3d Cir. 2005), as amended (Feb. 25, 2005)
17 *Cendant PRIDES*, 243 F.3d at 730 (internal quotations omitted.)

18 The Court will address the objectors arguments in
19 order. Mr. Hedley's first objection -- that the fee request
20 is unreasonably disproportionate to the overall settlement --
21 is unsupported. The Court has not found any rules or
22 standards that demand or require that settlement awards be
23 exclusive of expenses. Neither the text of Rule 23(h) nor the
24 Private Securities Litigation Reform Act ("PSLRA") makes it a
25 requirement that expenses be exclusive of the settlement

1 amount. Moreover, several courts nationwide regularly affirm
2 districts courts' awards inclusive of expenses and fees as
3 opposed to exclusive of them. *Kornell v. Haverhill Ret. Sys.*,
4 790 F. App'x 296, 298 (2d Cir. 2019) (affirming district
5 court's award of a percentage of the gross settlement fund,
6 rather than the settlement fund net of expenses, and finding
7 that the "text of Federal Rule of Civil Procedure 23(h) does
8 not bar one method or the other, as long as the award is
9 reasonable, and we decline to read a proscription into Rule
10 23(h) where there is none"); *Powers v. Eichen*, 229 F.3d 1249,
11 1258 (9th Cir. 2000) (rejecting argument that the "amount. . .
12 actually paid to the class" means only "the net amount
13 received after . . . expenses"); *In re Online DVD-Rental*
14 *Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015) ("The
15 district court did not abuse its discretion in calculating the
16 fee award as a percentage of the total settlement fund,
17 including notice and administrative costs, and litigation
18 expenses."); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 172
19 n.8 (3d Cir. 2006) (rejecting objections that attorneys' fees
20 must be calculated based on net settlement amount and noting
21 "[e]xpenses are generally considered and reimbursed separately
22 from attorneys' fees").

23 Mr. Hedley's objection that plaintiffs' attorneys' fees
24 being 29 percent is unreasonable and extensive is not agreed
25 by the Court. Though the Court recognizes that the fee of 29

1 percent is high, it is not unreasonable. First, Mr. Hedley
2 has not presented any authority that makes it mandatory that
3 the fee percentage be 25 percent as he proposes. The majority
4 of Mr. Hedley's supporting authority recommends 25 percent,
5 but those courts' calculations are based on a number of
6 factors, including the settlement amount, the complexity of
7 the case, quality of the results achieved, and overall efforts
8 of counsel in obtaining those results. *Cendant PRIDES*, 243
9 F.3d at 722. Second, counsel has provided evidence of the
10 efforts it undertook in obtaining this result in this case.
11 Here, as plaintiffs' counsel has argued, this case has
12 proceeded for more than four years, discovery was extensive
13 with over five million pages produced, dozens of depositions
14 conducted, and the issues were generally complex. Third,
15 nationwide and within our district courts have awarded fee
16 percentages well within and above the 29% being requested in
17 this case.

18 Mr. Hedley's objection as it relates to the Plan of
19 Allocation is also denied. Here, Mr. Hedley contends that the
20 Plan of Allocation is flawed because the loss amounts within
21 the plan are not reasonably related to the damages suffered by
22 the shareholders including him. Mr. Hedley's objection is
23 flawed insofar as "courts 'generally consider plans of
24 allocation that reimburse Class members based on the type and
25 extent of their injuries to be reasonable,'" and "pro rata

1 distributions are consistently upheld." *In re Ocean Power*
2 *Techs.*, 2016 WL 6778218, at *23 (D.N.J. Nov. 15, 2016) (internal
3 citation omitted.) Adding "there is no requirement that a
4 Plan of Allocation differentiat[e] within a Class based on the
5 strength or weakness of the theories of recovery.'"

6 Additionally, the settlement notice informed all Class Members
7 that they may recover more or less than the estimated average
8 amount. (Notice of Settlement Notice ¶ 3, ECF No. 351-9.)

9 Mr. Hedley's second objection that the attorneys' fees
10 are not warranted because the case is not complex, risky, or
11 unique is also overruled. As plaintiffs' counsel aptly noted
12 this case was complex and risky in various ways and the Court
13 agrees. For example: (1) the issues in this case were complex
14 as they spanned across several pharmaceutical companies
15 touching on issues of fraud, market access, and pricing, (2)
16 the need for counsel to adapt to the pandemic with regards to
17 remote proceedings and marshalling evidence, (3) the case
18 surviving the motion to dismiss stage, (4) dozens of
19 depositions, and (5) over five million pages of discovery all
20 add to the complexity of the case.

21 Third, it is significant for the Court that out of the
22 378,728 copies of the settlement notices that were disbursed,
23 there was only one objector, Mr. Hedley. Further, as
24 plaintiffs' counsel notes, the sole objector's issue is
25 neither with the settlement nor the Plan of Allocation as a

1 whole but rather with the attorneys' fees. As courts have
2 stated, when the number of objectors is this low, the "vast
3 disparity between the number of potential Class Members who
4 received notice of the settlement and the number of objectors
5 creates a strong presumption . . . in favor of the settlement.
6 *Cendent PRIDES.*, 264 F.3d at 235.

7 Mr. Hedley's fourth objection -- that fee request fails
8 to disclose how the fees will be allocated and the fee
9 petition gives counsel unchecked authority on how to allocate
10 the fees -- is also overruled. The Third Circuit *In re*
11 *Cendant Corp. Litig.*, which Mr. Hedley heavily relies,
12 concluded that the objector's pay-to-play concerns were
13 ultimately unfounded because the court explained that
14 "[a]llegations of impropriety are not proof of wrongdoing
15 [and] [i]f they were, then any class member (or lawyer seeking
16 to be appointed lead counsel) could disable any presumptive
17 lead plaintiff by making unsupported allegations of
18 impropriety." 264 F.3d at 270. In essence, the court
19 explained that the objectors did not have any evidence of
20 wrongdoing to suggest that counsel would not properly allocate
21 the fees. Likewise, Mr. Hedley's concerns are simply
22 unsupported by any evidence that counsel engaged or will
23 engage in any conduct that gives rise to pay-to-play concerns.
24 In sum, Mr. Hedley's concerns of impropriety are purely
25 speculative.

1 Mr. Hedley's objection that plaintiffs' counsel should
2 not be paid simultaneously with the award to the Class is also
3 overruled. Mr. Hedley first contends the quick pay provision
4 violates the PSLRA. However, Mr. Hedley cites no specific
5 provision that was violated. Instead, the provision Mr.
6 Hedley cites mandates that fee percentages should not exceed
7 award of damages, but it states nothing on the timing of the
8 payments. Also, in the case Mr. Hedley cites, *Hart v. BHH,*
9 *LLC*, 334 F.Rd. 74 (S.D.N.Y. 2020), the court's primary concern
10 was whether paying the attorneys first harms the Class. Here,
11 Mr. Hedley has not presented any evidence or facts to suggest
12 that by paying the attorneys first this would somehow harm the
13 Class. Further, in the *Eubank v. Pella Corp.* case, 753 F.3d
14 718 (7th Cir. 2014), which Mr. Hedley also relies on, the
15 court was only suspicious of the quick-pay provision because
16 the attorneys had a conflict of interest which was not fully
17 disclosed. The Court cannot conclude that the quick-pay
18 provision should not be enforced. The Court also finds
19 plaintiffs' counsels position that they have litigated the
20 case for over four years without pay is persuasive and favors
21 the enforcement of the quick-pay provision.

22 Mr. Hedley's final concern that counsels misjudged the
23 value of the case did not accurately predict the results of
24 the case is also overruled. Plaintiffs' counsels are skilled
25 lawyers who at the outset predicted the case at a higher

1 amount and over the course of litigation, the case settled for
2 a lesser amount. In agreeing to accept the \$100 million
3 dollar settlement on behalf of the Class -- which the Class
4 overwhelmingly approves of -- counsel engaged in extensive
5 discovery, mediation, and litigation. The Court does not find
6 any reason to believe counsel engaged in unnecessary discovery
7 to force a settlement amount. As counsel states, and the
8 Court agrees, the lengthy discovery they engaged in is
9 evidence of the case's complexity. In conclusion, Mr.
10 Hedley's objections are overruled, and the attorney' fees will
11 remain at \$29 million dollars.

12 Accordingly, the Court approves the Class Settlement
13 Agreement and grants Class counsel's Motion for Attorneys'
14 Fees, Costs, and Service Awards. An order consistent with
15 this opinion will be issued later today.

16 I do want to raise this issue. I believe there are
17 three orders before me, and I want to make sure that I have it
18 on the record.

19 Mr. Cecchi, I don't know if you or Mr. Hollander are
20 going to affirm this, but I have an Order and Judgment
21 Approving Class Action Settlement that was proposed to the
22 court. I have an Order Awarding Attorneys' Fees and
23 Litigation Expenses and Awards to Lead Plaintiffs. That's a
24 proposed order before me. I also have a third proposed order
25 which is an Order Approving Plan of Allocation.

1 Are you all tracking that those are the three proposed
2 orders that would be consistent with my ruling today?

3 MR. CECCHI: Yes, Your Honor.

4 MR. HOLLANDER: Yes, Your Honor.

5 THE COURT: All right. I intend to execute these
6 three records or proposed orders today and place them on the
7 docket.

8 Is there anything further from plaintiffs' counsel?

9 MR. CECCHI: No, Your Honor. Thank you for your time
10 and diligence today.

11 THE COURT: Defense, I'm sorry.

12 MR. POTISCHMAN: Nothing further.

13 THE COURT: Mr. Hedley, I noted your objection and
14 it's on the record, but anything further from you before I
15 adjourn today's proceedings?

16 MR. HEDLEY: Nothing, Your Honor. Thank you.

17 THE COURT: Thank you all for your time. This matter
18 is now adjourned. Be well.

19 (Court concludes at 11:58 a.m.)
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FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE.

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

I

/S/ Megan McKay-Soule, RMR, CRR

August 18, 2022

Court Reporter

Date